CASE NO. 87-718

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RICHARD L. DUGGER, Secretary,
Florida Department of Corrections,

Petitioner,

v.

WILLIAM D. CHRISTOPHER,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH
CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) WHETHER THE PRESENT DECISION, IN HOLDING THE "CONFESSION" INADMISSABLE, CONFLICTS WITH MICHIGAN V. MOSLEY, WHERE THE INSTANT "CONFESSION" WAS PROCURED ONLY AFTER MR. CHRISTOPHER INVOKED HIS RIGHT TO REMAIN SILENT ON FOUR OCCASIONS [E.G. "I GOT NOTHING ELSE TO SAY"], AND THE POLICE CONTINUED QUESTIONING AFTER EACH INVOCATION.

(2) WHETHER A "CONFESSION" WHICH IS PRECEDED BY FOUR DISTINCT INVOCATIONS OF THE RIGHT TO REMAIN SILENT [E.G. "I GOT NOTHING ELSE TO SAY."], WHICH IS PRECEDED BY A "CHANGE" OF SUBJECTS FROM THE CRIME TO WARRANTS AND EXTRADITION FOR THE CRIME, AND WHICH IS NOT PRECEDED BY ANY CESSATION IN QUESTIONING, CAN BE VALIDATED UNDER A RE-INITIATION CONCEPT.

(3) WHETHER THE ELEVENTH CIRCUIT PERMISSIBLY RE-EXAMINED THE "CONFESSION" TRANSCRIPT IN REVIEWING THE LOWER COURTS' CONCLUSIONS REGARDING MR. CHRISTOPHER'S INVOCATION OF HIS RIGHT TO REMAIN SILENT, WHERE THE TRIAL COURT NEVER MADE A FINDING THEREON, AND THE REVIEWING COURTS EXAMINED THE IDENTICAL INTERROGATION TRANSCRIPT.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner's claimed basis for certiorari jurisdiction of this Court is unclear. See Sup. Ct. R. 21.5. This case does not involve an important federal question; instead, the well established Miranda area of law is applied to a "confession" transcript, and the Eleventh Circuit properly concluded that questioning must cease after a suspect states "Then I got nothing else to say." (Twice at A-152). Miranda and its progeny clearly require the cessation of questioning once a suspect indicates the desire to remain silent. This rule does not need clarification by this Court.

Apparently, the State contends (1) the instant decision conflicts with Michigan v. Mosley, 423 U.S. 96 (1975) ("Mosley"); (2) the reinitiation concept is applicable to right to silence cases, but was misapplied herein; and (3) the Eleventh Circuit did not adequately defer to the courts which had previously considered Mr. Christopher's invocation of his right to silence. No conflict with other Federal court decisions is claimed.

In brief response, (1) Mosley was not only correctly applied, but indeed Mosley mandated the Eleventh Circuit's reversal of the lower court; (2) the first three invocations of the right to silence, conspicuously ignored by the State, vitiates any reinitiation argument; further, the instant questioning simply never ceased, and thus there could not be any reinitiation. Finally, (3) the trial court never made a finding regarding the invocation of silence, any reinitiation, and any waiver of the right to silence; the reviewing courts never made an independent fact finding, but instead relied upon

the same interrogation transcript examined by the Eleventh Circuit; the Eleventh Circuit gave due deference to the factual findings below (e.g., the transcript of the subject interrogation was accepted as true), but disagreed with the lower court's application of federal constitutional law to the interrogation sequence; the invocation of silence and reinitiation issues presented a mixed question of law and fact not subject to the presumptions of correctness required by Act of June 25, 1948 ch. 646, 62 Stat. 967, 28 U.S.C. §2254 (1948); and the Eleventh Circuit concluded that the lower courts' findings were not reconcilable with the record.

This case presents no new or unique questions of law. Instead, the essence of the Eleventh Circuit's decision is clear: Once an "individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent [e.g. "I got nothing else to say." twice at A-152], the interrogation must cease." Miranda v. Arizona, 384 U.S. 436, 473-474 (1966) (emphasis supplied) ("Miranda"). Once the right to remain silent has been invoked "in any manner", Mosley requires that this right be "scrupulously honored." Mosley, 423 U.S. at 104. Instead of scrupulously honoring Mr. Christopher's numerous invocations of his right to remain silent, the interrogating officers replied with challenging and accusatory statements.

The dictates of Miranda and Mosley relative to the invocation of the right to silence have been stated by this Court on numerous occasions. No useful purpose would be served by revisiting this well-tread area of the law. This case does not involve ambiguous legal principles, nor does the State so contend. Instead, this is a case in which the interrogating

officers simply ignored the Defendant's right to remain silent by continuing to question Mr. Christopher after he stated "I got nothing else to say." (Twice at A-152).

STATEMENT OF THE CASE

Unfortunately, Petitioner's statement of the case is very deficient. The dialogue in which Mr. Christopher invokes his right to remain silent on numerous occasions, and which forms the very heart of the Eleventh Circuit's opinion, is omitted. In addition, the Petitioner claims the trial court made certain findings regarding the invocation of the right to silence; the Petitioner has not and cannot provide citations for these "findings", as they do not exist. See Footnote 2, infra at 6. As the Eleventh Circuit noted:

> The State's account of the interrogation in its brief varies substantially from the record. The State claims that after Officer Mills' initial "clarifying" statements "Christopher continue[d] of his own volition to speak." Appellee's Brief at 15 (emphasis supplied). While the State concedes that there were other attempts to terminate the interrogation, the State does not mention that Christopher responded to this purported clarification with a second request to cut off questioning.

Christopher v. State, 824 F.2d 836, 841, n. 15 (11th Cir. 1987).

The importance of the relevant interrogation sequence requires its full inclusion.

> YOUNG: [Collier County Police Detective] That's the real corker, I can't understand why you killed this elderly lady, I mean I can understand you might be -
>
> CHRISTOPHER: Well, save-
>
> YOUNG: Now wait a minute, yea, I accused you for we signed a warrant against you.
>
> CHRISTOPHER: Okay.
>
> YOUNG: Ah-

CHRISTOPHER: Then I got nothing else to say. If you're accusing me of murder, then, take me down there.

YOUNG: [Challenging response][1] You were accused when you came in here. You knew you were accused--

CHRISTOPHER: That's right. That's right.

MILLS: [Collier County Police Detective] [Challenging response; mention of Christopher's daughter's involvement] You knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.

CHRISTOPHER: Oh, ah, -- I know what I'm accused of. I know that I'm accused of both murders.

MILLS: I told you awhile ago you were being charged with both murders.

CHRISTOPHER: Okay, then, I got nothing else to say.

YOUNG: [Challenging response] You mean its all right, as long as we accuse you of one?

MILLS: [Double teaming with Young] But, all of a sudden when you're accused of two, you don't-

CHRISTOPHER: I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?

YOUNG: Yeah. You--you should know.

CHRISTOPHER: Okay, then. What's the need of me saying anything then.

MILLS: [Challenging reply] What are you upset about?

CHRISTOPHER: You ask me? I'm upset about the fact that you're bringing my daughter up here like I'm using her in this thing.

YOUNG: I'm asking you-

MILLS: [Double teaming; involvement of daughter] I'm asking you to explain her actions in this thing?

CHRISTOPHER; Her actions. Her actions in what? I don't see where she's done anything.

A-151-153 (emphasis supplied).

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[1] To facilitate the application of this interrogation to the Argument section of this Brief in Opposition, and to abbreviate the Argument section, Respondent has taken the liberty to characterize and notate this passage; Respondent does not imply that the actual transcript contained the bracketed statements.

Thus, in the space of thirty lines Mr. Christopher invoked his right to remain silent three times: "Then I got nothing else to say." "Okay, then, I got nothing else to say." "What's the need of me saying anything then."

The claimed failure to accord due deference to lower courts findings shares an equally faulty factual basis, as well as a defective procedural basis. Axiomatically, if no facts have been found, no deference is due. The trial court herein never made a finding that Mr. Christopher failed to invoke his right to remain silent, or that Mr. Christopher reinitiated the interrogation.[2/] Thus, the "facts" found below relative to

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[2/] The trial court concluded that Mr. Christopher waived his right to counsel, and that the confession was voluntary. A-94. The trial court, in its "findings", never examined the right to silence issue in any manner; the reinitiation concept was not addressed either. A-93 to A-96. The trial court does state that "Miranda has been complied with " (Id. at 96); however, the Miranda issue under consideration was the waiver of right to counsel, and the voluntariness of the confession. Id. at 94, 179-181 (Motion to Suppress Confession).

The State, in its Petition at 26, twice claims the trial court concluded Mr. Christopher never invoked his right to remain silent. However, the State does not provide a citation for this statement and, it is respectfully submitted, cannot provide such a citation. The State also argues that the Florida trial court accepted the Police Officers "explanation" of what occurred during the interrogation (Pet. at 26); again, however, the State does not cite to any statement by the trial court supporting the conclusion that the trial court even considered, let alone accepted, the Police Officers' testimony regarding the right to silence invocation. The State then claims the court reporter could not accurately transcribe the interrogation, and thus the instant transcript is inaccurate. Id. at 27-28. In this light, one must wonder whether the State is attempting to support or undermine the facts found below and whether the State is attempting to clarify or cloud the issues.

the right to silence are contained solely in the transcript as quoted above. The Florida Supreme Court and the Southern District of Florida had the same interrogation transcript before them as did the Eleventh Circuit. The Eleventh Circuit gave all deference that was due: it accepted the transcript. The Constitutional effect of these facts is open to free review; no deference is due to the State court's or Federal District Court's legal analysis based on these facts.

Procedurally, the State never argued that the lower courts' "findings" were binding upon the Eleventh Circuit until it moved for rehearing before the Eleventh Circuit. The District Court order does not reference any factual presumption. This issue arose for the first time, then, after the adverse Eleventh Circuit decision.[1/]

Respondent also takes strong exception to the Petitioner's statements that it was Mr. Christopher who killed the victims herein.

1/ In addition, the subject fact finding process was inherently defective. Act of November 2, 1966, Pub. L. No. 89-711, §2, 80 Stat. 1105, 28 U.S.C. § 2254(d)(2) (1966). Mr. Christopher never testified at the confession suppression hearing. The deficiency in this hearing is the basis for Appeal Number 85-5220, consolidated below. Essentially, the Collier County Judge would not rule on the admissibility at trial of testimony given by Mr. Christopher at the suppression hearing. Thus, Mr. Christopher could attempt to defeat the admissibility of his confession; or he could invoke his Fifth Amendment right to silence, and not testify at the suppression hearing. He could not do both. The requirement that Mr. Christopher forego one constitutional right to exercise another is impermissible. Simmons v. United States, 390 U.S. 377 (1968).

WHETHER THE PRESENT DECISION, IN HOLDING THE "CONFESSION" INADMISSIBLE, CONFLICTS WITH MICHIGAN V. MOSLEY, WHERE THE INSTANT "CONFESSION" WAS PROCURED ONLY AFTER MR. CHRISTOPHER INVOKED HIS RIGHT TO REMAIN SILENT ON FOUR OCCASIONS [E.G. "I GOT NOTHING ELSE TO SAY"], AND THE POLICE CONTINUED QUESTIONING AFTER EACH INVOCATION

The State claims a lack of clarity in Mr. Christopher's invocation of his right to silence. This contention is unfathomable: stating "I got nothing else to say" is clearly an invocation of the right to silence. As the Eleventh Circuit noted, "[t]his comment, considered in the totality of the circumstances, cannot be viewed as anything other than an unequivocal invocation of his right to remain silent." Christopher, 824 F.2d at 842.

Once Mr. Christopher twice stated "I got nothing else to say", Mosley and Miranda required the interrogation cease. The State counters that after Mr. Christopher's fourth invocation of his right to silence, the officers complied with Mosley, by "changing" the subject to the arrest warrant and extradition for the charged crimes. Pet. at 21. Mr. Christopher's first three invocations of his right to remain silent, virtually ignored in the Petitioner's Statement of the Case, is likewise omitted from the State's argument. Only if the State manipulates the plain transcript in this cause, and omits the first three invocations, can the State's argument have any validity.

The State's analysis permits the police to simply ignore the first three invocations of the right to remain silent, continue the questioning, and when the detainee finally becomes "more cooperative", the State can utilize the detainee's statements. Under the State's scheme, even the clearest of statements that the defendant wishes to terminate questioning

could simply be ignored. The Respondent fervently implores this Court to reject this contention. Such a pattern of questioning would eviscerate Miranda.

Indeed, the Mosley court expressly rejected the precise interpretation of Miranda proposed by the State: i.e. that a "momentary cessation" of questioning, or a "changing of the subject", is sufficient to fulfill the responsibility to cut off questioning.

> Or [Miranda] could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a momentary respite.
>
> It is evident that any of these possible literal interpretations [of Miranda] would lead to absurd and unintended results. To permit the continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of Miranda by allowing repeated rounds of questioning to undermine the will of the person being questioned.

Mosley, 423 U.S. at 102.

The State is in an untenable position. It acknowledges, as it must pursuant to Miranda and Mosley, that questioning must cease after an invocation of the right to remain silent. Unfortunately for the State, this clear legal requirement was ignored after Mr. Christopher's first three invocations. In an effort to prevail herein, the State elects to don blinders as to these initial invocations. This approach was correctly and strongly dismissed below. Once the Eleventh Circuit perceived that "the State's account of the interrogation . . . varies substantially from the record" (Christopher, 824 F.2d at 841, n. 15) and noted that the initial statements by Christopher "cannot be viewed as anything other than an unequivocal invocation of his right to remain silent" (id. at 842), the fallacy of the State's position became clear.

The Eleventh Circuit's decision is not only supported by Mosley, but it is mandated by Mosley. After the very first invocation of the right to silence, the interrogation had to cease. Instead, the interrogators continued through three additional invocations without stopping. The State's attempts to circumvent Miranda and Mosley must not be sanctioned by this Court.

WHETHER A "CONFESSION" WHICH IS PRECEDED BY FOUR DISTINCT INVOCATIONS OF THE RIGHT TO REMAIN SILENT [E.G. "I GOT NOTHING ELSE TO SAY."], WHICH IS PRECEDED BY A "CHANGE" OF SUBJECTS FROM THE CRIME TO WARRANTS AND EXTRADITION FOR THE CRIME, AND WHICH IS NOT PRECEDED BY ANY CESSATION IN QUESTIONING, CAN BE VALIDATED UNDER A RE-INITIATION CONCEPT

The State claims that after Mr. Christopher invoked his right to remain silent, the police officers "changed" the subject matter of the interrogation from the crimes to the warrants and extradition for the crime. After that point, contends the State, Mr. Christopher re-initiated the conversation between he and the officers, and subsequently confessed. Borrowing from Edwards v. Arizona, 451 U.S. 477 (1981) ("Edwards"), the State concludes the "confession" is valid, even though the State violated Mr. Christopher's right to remain silent. Pet. at 38.

Crucial to the State's conclusion is the faulty premise that "of course" "a police officer [can] continue to converse, permissibly, with a suspect, who, during an interrogation, invokes his right to remain silent." Pet. at 21. The State does not provide a citation for its unique interpretation of the right to silence. Respondent respectfully submits that what is so patent to the State (e.g., police officers can continue to converse with defendants after they have invoked their right to remain silent) is indeed difficult to reconcile with the unambiguous Miranda holding: once an individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. Miranda, 384 U.S. at 473-474. This fundamental misapprehension of the law illustrates the speciousness of the State's analysis in this cause.

The reinitiation concept is not available to the State in this action: the interrogating officers did not stop the questioning or change the subject after Mr. Christopher said, "Then I got nothing else to say."; the interrogating officers did not stop the questioning or change the subject following the second time Mr. Christopher stated, "I got nothing else to say."; and the interrogating officers did not stop the questioning or change the subject following Mr. Christopher's statement, "Okay, then. What's the need of me saying anything then." Instead, the officers responded by challenging Mr. Christopher regarding his knowledge of the charges, double-teaming Mr. Christopher, and referencing the involvement of Mr. Christopher's daughter in the murder scenario. See A-152-153, quoted above.

As with the first issue, in an attempt to prevail herein, the State is forced to don blinders to the first three invocations of the right to remain silent by Mr. Christopher. Only if the officers had attempted to "change" the subject matter of the interrogation after each of the first three invocations of the right to silence would the State's "reinitiation" concept be relevant.

Finally, as adeptly recognized by the Eleventh Circuit, "the first prong of the initiation test requires that any previous police-initiated interrogation have ended prior to the suspect's alleged initiatory remark; for, just as one cannot start an engine that is already running, a suspect cannot 'initiate' an on-going interrogation." Christopher; 824 F.2d at 845 (emphasis original). Mr. Christopher challenges the State to identify any cessation of questioning. After the first invocation of the right to remain silent, the questioning

continued; after the second invocation of the right to remain silent, the questioning continued; after the third invocation of the right to remain silent, the questioning continued; after the fourth invocation of the right to remain silent, the questioning continued.

Only if the first three invocations of the right to silence are ignored, and only if the lack of any cessation in questioning is ignored, can one successfully assert the reinitiation issue. Because of the prior invocations, and the failure of the interrogators to cease questioning, the reinitiation issue forwarded by the State is without merit.

WHETHER THE ELEVENTH CIRCUIT PERMISSIBLY RE-EXAMINED THE "CONFESSION" TRANSCRIPT IN REVIEWING THE LOWER COURTS' CONCLUSIONS REGARDING MR. CHRISTOPHER'S INVOCATION OF HIS RIGHT TO REMAIN SILENT, WHERE THE TRIAL COURT NEVER MADE ANY FINDINGS THEREON, AND THE REVIEWING COURTS EXAMINED THE IDENTICAL INTERROGATION TRANSCRIPT

The State also contends that the courts which have previously considered whether Respondent invoked his right to remain silent concluded that he did not; therefore, continues the argument, Act of November 2, 1966, Pub. L. No. 89-711, §2, 80 Stat. 1105, 28 U.S.C. §2254(d) (1966) prohibits the Eleventh Circuit from concluding to the contrary. This argument is not supported by the record herein, and is legally inaccurate.

The admissibility of confessions has been addressed by the Court on innumerable occasions. This Court has not hesitated to re-examine the record to determine the accuracy of previous courts' conclusions. Brewer v. Williams, 430 U.S. 387 (1977) ("Whether [Defendant] waived his constitutional rights was not, of course, a question of fact, but an issue of federal law." Id. at 397, n.4; "[T]he question of waiver was not a question of historical fact, but one which in the words of Mr. Justice Frankfurter, requires 'application of constitutional principles to the facts as found . . . ." Id. at 403 (citing Brown v. Allen, 344 U.S. 443 (1953).)[4/] This principle has specifically been applied to waivers of the right to silence. Lamb v. Zahradnick, 452 F.Supp. 372, 375-76 (E.D. Va. 1978).

4/ See also United States v. Curcio, 694 F.2d 14, 21-22 (2d Cir. 1982) (Waiver of "right to separate and conflict - free representation"); Cahill v. Rushen, 678 F.2d 791, 795 (9th Cir. 1982) (Waiver of right to counsel); Martineau v. Perrin, 601 F.2d 1196, 1198 (1st Cir. 1979) (Waiver of right to a public trial).

The reviewability of a confession's admissibility was recently revisited in Miller v. Fenton, 474 U.S. 104, (1985). In Miller, the issue was whether voluntariness is an issue of fact entitled to the Section 2254(d) presumption. The applicability of Section 2254(d) to an inferior court's conclusion relative to the invocation of the right to silence was not explicitly decided. Nonetheless, the Miller court reaffirmed that "the ultimate question whether, under the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the Constitution is a matter for independent Federal determination." 474 U.S. at 112. The Court concluded that "[f]or several reasons we think that it would be inappropriate to abandon the Court's long standing position that the ultimate question of the admissibility of a confession merits treatment as a legal inquiry requiring plenary federal review." Id. at 115. Further, while subsidiary factual questions relative to the admissibility of confessions are entitled to the 28 U.S.C. §2254(d) presumption, "once such underlying factual issues have been resolved, and the moment comes for determining whether, under the totality of the circumstances, the confession was obtained in a manner consistent with the Constitution, the state-court judge is not in an appreciably better position than the federal habeas court to make that determination." Id. at 117.

The propriety of independent Federal review is particularly appropriate herein. The State mischaracterizes the previous "factual" determinations. The trial court never addressed the right to silence issue; the trial court never decided whether Mr. Christopher invoked his right to remain silent, and if so,

whether the officers scrupulously honored that invocation, and if so, whether Mr. Christopher re-initiated the interrogation. A-93 to A-96 (trial court concludes no violation of right to counsel, and that confession was voluntary and not improperly procured). The Florida Supreme Court and Judge King at the Southern District reviewed the exact same transcript of the interrogation as was considered by the Eleventh Circuit. No independent fact finding occurred during post-trial proceedings.

Due deference therefore was applied to the fact-finding process of the lower courts. The Eleventh Circuit accepted the interrogation transcript, and conducted an independent legal analysis of whether the facts disclosed in the interrogation transcript rendered the "confession" inadmissible. This is entirely appropriate, as "the state-court judge is not in an appreciably better position than the federal habeas court to make that determination [that the confession was obtained in a manner consistent with the Constitution]." Miller, 474 U.S. at 117.

The Petitioner's position is basically that it won at all the other levels of judicial review, and therefore the Eleventh Circuit is now bound to agree with the Petitioner as well. If the province of the various federal court of appeals were so limited, their review would be meaningless. Instead, literally hundreds of criminal convictions have been overturned for the first time by a federal appellate court, notwithstanding numerous state and federal district court reviews. The State dislikes this reality; nonetheless, the ability of Ernesto A. Miranda to have his case reviewed, and reversed for the first time at the United States Supreme Court, after extensive prior review, is at the heart of the protections afforded by the Federal Constitution.

CONCLUSION

The certiorari jurisdiction of this Court should not be devoted to an area of law which has been addressed at length by this Court, and which is well understood by lower courts and police agencies. Even at the time of Miranda, the holding that interrogation must cease when an individual indicates in any manner that he does not wish to be interrogated was a "holding [which was] not an innovation in our jurisprudence but [was] an application of principles long recognized in other settings." Miranda, 384 U.S. at 442. The Miranda court labored to be as clear as possible, and, it is respectfully submitted, the Miranda court succeeded. The following holding needs no clarification:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.

Id. at 473-74 (emphasis supplied).

The Supreme Court subsequently addressed the issue of when an interrogation can recommence following a valid invocation of the right to remain silent in Mosley. The court rejected the contention that once the right to remain silent has been invoked, the police can never again question the detainee. Mosley, 423 U.S. at 102. The court likewise rejected the concept that Miranda "could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a monetary respite." Id. The crucial inquiry, concluded the Mosley court, "depends under Miranda on whether his 'right to cut off questioning' was 'scrupulously honored'." Id. at 105.

Thus, the interrogation procedure used herein was specifically addressed in Mosley, and expressly rejected therein. The teachings of Mosley, and the application of the tests therein, have been followed without confusion by the various Federal appellate courts. See, e.g., United States v. Hernandez, 574 F.2d 1362 (5th Cir. 1978); United States v. Olof, 527 F.2d 752 (9th Cir. 1975).

Miranda and Mosley have set the standards for interrogators' conduct following an invocation of the right to remain silent. Another opinion in this well-established area of the law will not be of assistance to the police agencies, to the lower courts, or to the dictates of this Court's crowded docket. The bottom line herein is that the police officers' simply ignored three invocations of the right to silence; the interrogation was plainly improper. The State now seeks to invoke this Court's jurisdiction to cure the deficiencies of the interrogating officers herein, and to sanitize a patently objectionable interrogation. This Court's jurisdiction is too valuable to be devoted to such a goal.

This Court should deny the Petition for Writ of Cetiorari. If the Court issues the Writ, then Respondent respectfully requests an opportunity to fully brief the appropriate issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, TERRENCE JOSEPH RUSSELL, ESQ., Counsel for Respondent, and a member of the Bar of the United States Supreme Court, hereby certify that on the 6th day of January, 1988, I served one copy of the Brief in Opposition to Petition for Writ of Certiorari on KATHERINE V. BLANCO, ESQ., Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33062, and DONALD E. PELLECCHIA, ESQ., Assistant State Attorney, Twentieth Judicial Circuit, Lee County Criminal Justice Center, P.O. Drawer 399, Fort Myers, Florida 33902, by a duly addressed envelope, first class postage prepaid.

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